JACKQUALINE JACKLEY, Co-Defendant/Appellant, *v.*
HILTON SIAFFA, Plaintiff/Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: March 17, 2004. Decided: August 13, 2004.

1. The burden of proof rests with the party who alleges a fact.
2. The party who has the burden of proof must establish his allegations by the preponderance of the evidence.
3. Preponderance of the evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition; evidence which as a whole shows that the fact sought to be proved is more probable than not.
4. Averments in a pleading to which a responsive pleading is required are deemed admitted when not denied in the responsive pleading.

Appellant Jackqualine Jackley appealed from a judgment entered by the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in an action of replevin brought by appellee Hilton Siaffa for the return to him of an Izuzu vehicle which he claimed to have purchased from co-defendant Christian Teah, the fiancée of the appellant. The appellant, who was not originally a party to the suit, had on application, been allowed to intervene as a party defendant. The appellant claimed that the vehicle in question belonged to her; and that co-defendant Teah, not having title to the said vehicle and being without authorization from her, was without authority or legal ground to sell the vehicle to the appellee.

The evidence in the case showed that plaintiff/appellee had paid to co-defendant Teah the amount of US$3,000 against the purchase price of the vehicle, with promise under a promissory note, to pay the balance at a certain time. When the appellee defaulted on payment of the balance amount due, the vehicle was repossessed by co-defendant Teah. It was this repossession or seizure of the vehicle that necessitated the filing of the petition for replevin.

The appellant presented evidence to the trial court establishing that the vehicle belonged to her and not to co-defendant Teah, and that co-defendant Teah was without title and authorization from the appellant to sell the vehicle. These facts were admitted in the pleadings by co-defendant Teah and not denied by the appellee. The trial court nevertheless entered judgment that the vehicle should be turned over to the appellee or in the alternative that the appellant refund to the appellee the payment which he had made to co-defendant Teah, plus 6% interest.

The Supreme Court disagreed and reversed the lower court's ruling, noting that not only had appellant Jackley proved her ownership and that co-defendant Teah was without authorization to sell the vehicle, but also that the appellee had failed to prove the allegations asserted by him by a preponderance of the evidence to the effect that the vehicle was owned by co-defendant Teah. The Court further opined that the failure by the appellee to traverse or deny the allegations made in the answers by the defendants was deemed an admission as to the truth of the said allegations. Accordingly, the Supreme Court reversed the judgment of the trial court as to appellant Jackley, and held further that the funds received by co-defendant Teah be returned by him to the appellee, plus 6% interest.

James W. Zotaa of the Liberty Law Firm appeared for the appellant. The White & Associates, in association with *Elijah S. Cheapoo* of the Cheapoo Law Firm, appeared for the appellee

MADAM JUSTICE COLEMAN delivered the opinion of the Court

This matter is before us on appeal from the final judgment of His Honour Varnie D. Cooper, Presiding Judge of the Six Judicial Circuit Court, Montserrado County, growing out of a petition for replevin filed by Hilton Siaffa as plaintiff, now appellee, on October 20, 1999, against the defendant, Christian Teah. The appellee alleged in his complaint that he purchased an Isuzu vehicle with license plate No. 0092-TP from Christian Teah for a price of Six Thousand United States Dollars (US$6,000.00). That the amount of Three Thousand United States Dollars (US$3,000.00) was paid to Christian Teah and the balance United States Dollars Three Thousand (US$3,000.00) was to be paid in two installments, in keeping with a promissory note. The appellee further alleged that the defendant wrongfully repossessed the vehicle and was using it as his personal vehicle. He prayed the court to retrieve the said vehicle and return same to him. A writ of summons and an order of replevy were issued and served on defendant Teah and the vehicle was seized and brought to the Civil Law Court, Sixth Judicial Circuit.

Subsequently, on October 28, 1999, Jackqualine Jackley filed a motion to intervene, alleging among other things that she was the *bona fide* owner of the vehicle with license plate No. 0092-TP and that the said vehicle was sent to her by her brother in the United States. She prayed the court to intervene as a party defendant to protect her interest, which would be adversely affected if she was not permitted to intervene as she had never given permission to anyone to sell her vehicle. The motion to intervene was granted and Jackqualine Jackley was joined as co-defendant.

The intervener/co-defendant Jackqualine Jackley, now appellant, filed an answer claiming ownership to the vehicle and denied that the vehicle was sold to the appellee, as no bill of sale was executed by her for said vehicle. Furthermore, she asserted that the signature

appearing on the so-called hand to hand bill of sale attached to the complaint was not her signature.

Co-defendant Teah filed a reclaiming bond, and the vehicle which had been seized by the court was later turned over to appellant Jackqualine Jackley by orders of the court.

Co-defendant Teah filed an answer admitting that the owner of the Isuzu Jeep was Jackqualine Jackley, his fiancé. He stated that he acted in good faith, and, that believing selling the vehicle would meet the approval of appellant Jackley, he arranged for the sale of the vehicle to the appellee. Co-defendant Teah further alleged that he and the appellee agreed that the appellee would take possession of the vehicle and after the balance of Three Thousand United States Dollars (US$3,000.00) was paid, co-defendant Teah would secure a bill of sale from appellant Jackley.

There is no showing that a reply was filed to either of the co-defendants' answers.

A trial was held and a final judgment rendered on February 13, 2001, adjudging both co-defendant Christian Teah and appellant Jackqualine Jackley liable to appellee Hilton Siaffa. The court ordered that the vehicle be returned to the appellee and the balance of Three Thousand United States Dollars (US$3,000.00) be paid to the defendants by the appellee. The court further ruled that in the event appellant Jackley failed to produce and turn over the vehicle to the appellee then the amount of Three Thousand United States Dollars (US$3,000.00) paid to the appellant by the appellee be returned to appellee, plus 6% interest.

Appellant Jacqueline Jackley excepted to the final ruling and announced an appeal to this Honourable Court.

The single issue to decide this case is whether or not appellant Jackley sold or consented to the sale of her vehicle and is therefore liable to the appellee in an action of replevin?

Recourse to the records shows that the appellee filed his action of replevin against only co-defendant Christian Teah to recover one Isuzu jeep allegedly purchased from Christian Teah, who had repossessed it from the appellee when he failed to pay the balance outstanding. The appellant was not made a party to the suit. When appellant Jackqualine Jackley heard of the action pending involving the Isuzu vehicle she owned, she filed a motion to intervene to protect her interest.

Co-defendant Christian Teah filed an answer but did not participate in the trial, and no party subpoenaed him to appear and testify.

The complaint did not mention the name of appellant Jackley as being involved in the sale of the vehicle or that she gave her consent to the sale or received any money from anyone as part-payment for the purchase price of the vehicle. Moreover, there was no receipt to show that any funds were ever paid to the appellant, even though several documents from the Ministry of Finance, Division of Motor Vehicles, named appellant Jackqualine Jackley as the owner. It is an undisputable fact that Jacqualine Jackley is the owner of the vehicle, the subject of the action of replevin. Christian Teah, who sold the vehicle to the appellee, admitted in his answer that appellant Jackley owned the vehicle. This fact was never denied

by the appellee. Only when appellant Jackley intervened and denied giving anyone permission to sell her vehicle did the appellee, during the trial, try to disprove the allegation of appellant Jackley that she did not authorize co-defendant Teah to sell her vehicle.

A document referenced "Revised Legal Settlement" dated August 6, 1999, produced in evidence by the appellee, revealed that the appellee promised to pay the amount of One Thousand Four Hundred Thirty-Three United States Dollars & Thirty-Three Cents (US$1,433.33) to co-defendant Christian Teah for an Isuzu Jeep and named Christian Teah as owner/seller. No where in that document is Jackqualine Jackley mentioned as the owner or that Christian Teah was acting on her behalf.

During the trial, the appellee produced three witnesses who testified to the effect that the appellant, Jackqualine Jackley and co-defendant Christian Teah went to the home of the appellee, where they negotiated and agreed to sell the vehicle to him for the sum of Six Thousand Three Hundred United States Dollars (US$6,300.00).

The witnesses testified that the sum of Two Thousand United States Dollars (US$2,000.00) was paid to both defendant Teah and appellant Jackley by the appellee. The balance of Four Thousand Three Hundred United States Dollars (US$4,300.00) was to be paid by installments. When the appellee failed to pay the third installment when due, Christian Teah seized the vehicle. They further testified that appellant Jackley had informed the appellee that Christian Teah was her husband and would act on her behalf. No receipt for payment of the alleged Two Thousand United States Dollars (US$2,000.00) was produced at the trial to show that both Christian Teah and the appellant received this amount.

The complaint filed by the appellee clearly revealed that he and co-defendant Teah transacted for the sale and purchase of the vehicle without the involvement of appellant Jackley. We wonder why the appellant was not made a defendant in the complaint in the first place since it was alleged that she and co-defendant Teah went to appellee's house to sell the vehicle.

The answer to this question is obvious. Appellant Jackley did not sell her vehicle to appellee or give authorization for its sale. Rather, Christian Teah made false representations to the appellee that he was the owner of the vehicle, as stated in the document referenced 'Revised Legal Settlement'. In Christian Teah's answer filed in the court below, he admitted that the appellant was the owner of the vehicle and that he, acting in good faith, sold the vehicle. It is clear that the appellant was unaware that her vehicle was being sold.

There is no evidence to show that appellant Jackley trans-acted business with the appellee and signed any instrument relating to the sale and purchase of her vehicle. Thus, the testimonies of the appellee's own witnesses did not conform to the complaint. The allegations or averments of the complaint and the testimonies of the witnesses are clearly inconsistent.

The purported hand to hand bill of sale, dated July 9, 1999, named Jackqualine Jackley as the seller, with a signature purported to be that of the appellant. But during the trial, appellant Jackley testified that the signature on the purported hand to hand bill of sale was not her signature and presented several documents with her signatures which were glaringly different from the signature on the hand to hand bill of sale. This testimony and other evidence produced by the appellant were never denied by the appellee.

Moreover, appellant Jackley's second witness, in person of Theophilus Backala, testified that he had worked with appellant Jackley for several years and knew her signature, and that the signature on the hand to hand bill of sale was not the signature he knew to be that of appellant Jackley's. The appellee did not rebut the testimonies of co-defendant Jackley and witness Backala.

Our statute and several opinions of the Supreme Court provide: "The burden of proof rests with the party who alleges a fact..." "The party who has the burden of proof must establish his allegations by the preponderance of the evidence." Civil Procedure Law, Rev. Code 1:25.5(1) and (2); *Doe v. Mitchell*, 34 LLR 210 (1986); *The Management of The Forestry Development Authority (FDA) v. Walters and The Board of General Appeals*, 34 LLR 777 (1988); *Harouni v. Mathies et al.*, 38 LLR 27 (1995); *Mano Insurance Corporation v. Picasso Cafeteria,* 38 LLR 37 (1995).

Black's Law Dictionary, 5th edition, at page 616, defines preponderance of the evidence as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."

What burden of proof was the appellee required to meet? The complaint is against Christian Teah who the appellee claimed to have purchased the vehicle from. The evidence at the trial should have shown that Christian Teah either owned the vehicle or had authority to sell the vehicle and that authority was given to him by appellant Jackley. This the appellee failed to prove.

The complaint did not even allege that Christian Teah owned or held title to the vehicle, or had the authority to part with title. Even when appellant, in her motion to intervene and her answer, alleged that she was the owner of the said vehicle and attached a copy of the bill of lading naming her as the owner, and that she had not given any authorization to Christian Teah to sell her vehicle, appellee Hilton Siaffa did not file any responsive pleading to the appellant's answer to deny these allegations.

It was only during the trial that the witnesses testified that Jackqualine Jackley had orally given authorization to Christian Teah to sell her vehicle. Our law provides that "averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading." Civil Procedure Law, Rev. Code 1:9.8(3); *Inter-national Automobile Corporation v. Nah,* 31 LLR 576 (1983). Therefore, the allegations of fact in appellant Jackley's

answer that she owned the vehicle and had not given authority to co-defendant Christian Teah to sell her vehicle, which were not denied by appellee, must be deemed as admitted.

Co-defendant Teah himself, in his answer in counts (1) and (2), admitted that Jackqualine Jackley was his fiancé and the *bona fide* owner of the Isuzu vehicle; that he was acting in good faith and believing that selling the vehicle would meet the approval of his fiancé; that appellant Jackley met with plaintiff Siaffa and they both agreed that the appellee would take delivery of the car with assurances that appellee would receive a bill of sale from defendant's fiancé only after appellee completes payment of Six Thousand United States Dollars (US$6,000.00) on or before July 30, 1999. If Jackqualine Jackley had authorized Christian Teah to sell her vehicle, Christian Teah would have included this important fact in his answer.

The testimonies of appellee's witnesses that appellant Jackley was present with co-defendant Teah when arrangements for the sale of her vehicle were made are not convincing. We wonder why these testimonies or statements were not pleaded in the complaint. The denial by co-defendant Jackley of her knowledge that her vehicle was being sold was never denied in any responsive pleading. The evidence adduced at the trial by the appellee does not therefore warrant the final judgment given by the court holding the appellant liable for funds received by co-defendant Teah for the sale of appellant's vehicle.

We are therefore of the opinion that appellee Siaffa did not establish by the preponderance of evidence that appellant Jackley had knowledge of the sale of her Isuzu vehicle, or received any money from anyone for the vehicle, or gave authorization to co-defendant Teah to sell her vehicle, or that the signature on the hand-to-hand bill of sale is the signature of appellant Jackley to hold her liable.

The averments in the complaint and all evidence tend to prove that co-defendant Christian Teah sold the vehicle belonging to Jackqualine Jackley without her knowledge and consent, and that he received the funds from the appellee. There is no evidence that the appellant received the purchase price from co-defendant Christian Teah. Co-defendant Christian Teah should therefore be wholly and solely liable to the appellee for recovery of any monies he may have received from the sale of the Isuzu vehicle owned by appellant Jackley.

Wherefore, and in view of the foregoing, the final judgment of the court below is hereby reversed as to appellant Jackley. All funds received by co-defendant Christian Teah from appellee Hilton Siaffa must be refunded by co-defendant Teah, plus six (6%) percent interest. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over the case and give effect to this judgment. Costs are assessed against co-defendant Christian Teah. And it is hereby so ordered.

Judgment reversed in part.